

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: APU	CCRB Case #: 201802476	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/22/2018 7:19 PM	Location of Incident: In front of 546 West 160th Street	Precinct: 33	18 Mo. SOL 9/22/2019	EO SOL 9/22/2019	
Date/Time CV Reported Thu, 03/22/2018 7:25 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/29/2018 11:11 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Paul Rodriguez	12876	943750	033 PCT
2. POM Dwight Powell	09038	951077	033 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Ferrer	24131	945715	033 PCT
2. SGT Jeffrey Balzotti	03907	941388	033 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Paul Rodriguez	Force: Police Officer Paul Rodriguez used a chokehold against § 87(2)(b)	
B.POM Paul Rodriguez	Force: Police Officer Paul Rodriguez restricted § 87(2)(b)'s breathing.	
C.POM Dwight Powell	Force: Police Officer Dwight Powell used physical force against § 87(2)(b)	
D. An officer	Force: An officer used physical force against § 87(2)(b)	

## Case Summary

On March 22, 2018, § 87(2)(b) filed this complaint with IAB (log no. 2018-11631) (**01 Board Review**). On March 29, 2018, this case was received by the CCRB. § 87(2)(b) filed this complaint after witnessing § 87(2)(b)'s arrest from her apartment window. § 87(2)(b) is not acquainted with § 87(2)(b). § 87(2)(b) was uncooperative with the investigation, and did not provide a statement to the CCRB.

On March 22, 2018, at approximately 7:19 PM, § 87(2)(b) was running down 160<sup>th</sup> Street, fleeing from Police Officer Paul Rodriguez, Police Officer Dwight Powell, and Police Officer Christopher Ferrer, all of the 33<sup>rd</sup> Precinct. § 87(2)(b) hopped over a fence in front of 546 West 160<sup>th</sup> Street. PO Rodriguez entered through the gate after § 87(2)(b). § 87(2)(b) attempted to hop back over the fence, and PO Rodriguez hooked both of his arms around § 87(2)(b)'s throat, restricting his breathing (**Allegation A: Force, § 87(2)(g)**; **Allegation B: Force, § 87(2)(g)**). PO Rodriguez and § 87(2)(b) then fell to the ground. PO Powell placed his knee on § 87(2)(b)'s back (**Allegation C: Force, § 87(2)(g)**), and an officer allegedly punched § 87(2)(b) (**Allegation D: Force, § 87(2)(g)**).

§ 87(2)(b) was arrested in regards to this incident, and charged with § 87(2)(b) (**12 Board Review**).

This case was originally assigned to Investigator Nora Chanko, and was reassigned to Investigator Tessa Yesselman after Inv. Chanko's departure from the CCRB.

The investigation obtained security camera and cell phone video footage of this incident. See the allegations below for corresponding footage.

## Findings and Recommendations

**Allegation (A) Force: Police Officer Paul Rodriguez used a chokehold against § 87(2)(b)**

**Allegation (B) Force: Police Officer Paul Rodriguez restricted § 87(2)(b)'s breathing.**

§ 87(2)(b) did not provide a statement to the investigation (**17 Board Review**). The CCRB contacted § 87(2)(b) by telephone. § 87(2)(b) stated that he wanted the CCRB to stop contacting him and disconnected the call. § 87(2)(b) was not responsive to the CCRB's continued attempts to contact him.

§ 87(2)(b) (**03 Board Review**) stated that she observed the incident from § 87(2)(b)'s view of the incident was obscured by the staircase in front of 546 West 160<sup>th</sup> Street. § 87(2)(b) saw § 87(2)(b) running from PO Rodriguez, PO Ferrer, and PO Powell. § 87(2)(b) hopped over the gate in front of 546 West 160<sup>th</sup> Street. PO Rodriguez walked through the gate and "tackled" § 87(2)(b) by grabbing his upper body and shoulders. § 87(2)(b) then fell behind the gate, and was out of § 87(2)(b)'s view.

§ 87(2)(b) **(04 Board Review)** provided a telephone statement to the investigation. § 87(2)(b) stated that PO Rodriguez, PO Ferrer, and PO Powell were chasing § 87(2)(b) down West 160<sup>th</sup> Street. PO Rodriguez and PO Ferrer pulled § 87(2)(b) to the ground. § 87(2)(b) thought that officers pulled § 87(2)(b) to the ground by his shoulders.

PO Rodriguez **(05 Board Review)** stated that at approximately 7:15 PM on March 22, 2018, he was on patrol with Sgt. Balzotti, PO Powell, and PO Ferrer. Sgt. Balzotti was the operator of the vehicle, and was driving northbound on Broadway. PO Rodriguez observed a male, later known to him as § 87(2)(b) and a female, § 87(2)(b) and the female were “in each other’s faces.” § 87(2)(b) began “wailing” on the female. The female fell and attempted to get up. § 87(2)(b) grabbed the female’s jacket hood, pulled her up, and began “upper cutting her.” PO Rodriguez observed § 87(2)(b) strike the female approximately three times. After observing § 87(2)(b) for approximately fifteen to twenty seconds, PO Rodriguez, PO Powell, and PO Ferrer exited the vehicle and approached § 87(2)(b) started running towards 160<sup>th</sup> Street. PO Rodriguez was running directly behind § 87(2)(b) in the street. PO Powell and PO Ferrer were behind PO Rodriguez, and running on the sidewalk. PO Rodriguez told § 87(2)(b) to stop. PO Rodriguez caught up to § 87(2)(b) halfway down the block on 160<sup>th</sup> Street from Broadway. PO Rodriguez had been chasing § 87(2)(b) for approximately thirty seconds. PO Rodriguez saw Sgt. Balzotti driving ahead of him on 160<sup>th</sup> Street and Amsterdam Avenue. When PO Rodriguez caught up to § 87(2)(b) jumped a fence. The fence was eight to nine feet tall. PO Rodriguez saw a hole in the fence, and went through it. § 87(2)(b) then tried to jump back over the fence. PO Rodriguez grabbed § 87(2)(b) by his belt and pulled him down. This was the first physical contact PO Rodriguez made with § 87(2)(b) § 87(2)(b) fell to the ground, and PO Rodriguez fell with him. PO Rodriguez stated that he did not make any contact with § 87(2)(b)’s neck or throat while pulling him down to the ground. PO Rodriguez stated that there was “no need” to use a chokehold against § 87(2)(b) PO Rodriguez did not see any other officers make contact with § 87(2)(b)’s neck or throat, or use a chokehold against § 87(2)(b).

The TRI prepared by PO Rodriguez shows that PO Rodriguez used a “forcible takedown” against § 87(2)(b) **(13 Board Review)**.

PO Ferrer **(08 Board Review)** and PO Powell **(06 Board Review)** provided statements largely consistent with PO Rodriguez. PO Ferrer and PO Powell observed § 87(2)(b) punching an unknown female individual. § 87(2)(b) began running down 160<sup>th</sup> Street, and PO Rodriguez, PO Ferrer, and PO Powell ran after him. PO Ferrer and PO Powell did not see PO Rodriguez, or any other officer, use a chokehold against § 87(2)(b).

Video **(09 Board Review)**, labeled below as “1” shows PO Rodriguez take § 87(2)(b) to the ground. At video time mark 19:22:00, the police vehicle operated by Sgt. Balzotti appears in the top left of the screen, and speeds through the picture. At 19:22:02, § 87(2)(b) is pictured in the top left of the screen, running. At 19:22:03, PO Rodriguez is pictured in the top center of the screen, running after § 87(2)(b). At 19:22:08, PO Ferrer is pictured running in the top left of the screen, running after § 87(2)(b). At 19:22:11, § 87(2)(b) is pictured in the bottom right of the screen, hopping over a fence. At 19:22:15, PO Powell is pictured in the top left of the screen, running towards PO Ferrer, PO Rodriguez, and § 87(2)(b). At 19:22:16, PO Rodriguez

opens the gate and enters the fenced area § 87(2)(b) is in. At 19:22:21, PO Rodriguez pulls § 87(2)(b) by the belt, as § 87(2)(b) attempts to climb back over the fence. At 19:22:23, PO Rodriguez wraps his left arm around § 87(2)(b)'s neck. At 19:22:24, PO Rodriguez wraps his right arm around § 87(2)(b)'s neck. At 19:22:25, PO Rodriguez and § 87(2)(b) fall towards the ground, and out of the frame of the video.



1.mp4

§ 87(2)(g)

Patrol Guide Procedure 221-01 defines a chokehold as including, but not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. The patrol guide further states that officers shall not use chokeholds **(16 Board Review)**.

§ 87(2)(g)

**Allegation C: Police Officer Dwight Powell used physical force against § 87(2)(b)**  
**Allegation D: An officer used physical force against § 87(2)(b)**

§ 87(2)(b) did not provide a statement to the investigation **(17 Board Review)**.

§ 87(2)(b) **(03 Board Review)** did not describe PO Powell using physical force against § 87(2)(b)

§ 87(2)(b) provided cell phone video **(10 Board Review)** to the investigation, labeled below as “2.” The video does not show PO Powell using physical force against § 87(2)(b) but contains audio of the interaction. § 87(2)(b) is heard loudly groaning throughout the video. At the :07 mark, PO Rodriguez is pictured in a red hooded sweatshirt, outside of the gated area in front of 546 West 160<sup>th</sup> Street. At the :19 mark, Sgt. Balzotti is shown standing up inside of the gated area, and § 87(2)(b) says, “He hit me.” At the :28 mark, Sgt. Balzotti exits the gated area. At the :30 mark, § 87(2)(b) is heard saying, “I can’t breathe” repeatedly, and that he needs, “The hospital.” At the :40 mark, Sgt. Balzotti motions into the gated area and says, “Pick him up.” At the :59 mark, PO Powell moves § 87(2)(b) on to his side. PO Powell repeatedly tells § 87(2)(b) to sit up. The video ends with § 87(2)(b) still on his side.



2.MOV

The security camera footage, as discussed above in Allegation A, does not capture the ground, and thus does not show PO Powell or any other officers, interaction with § 87(2)(b) on the ground.

§ 87(2)(b) **(04 Board Review)** stated that after PO Rodriguez and PO Ferrer brought § 87(2)(b) to the ground that an officer, identified as PO Powell, placed his knee on § 87(2)(b)'s upper back. PO Powell then stood up and placed his foot on the back of § 87(2)(b)'s neck. § 87(2)(b) was screaming for help.

PO Powell **(06 Board Review)** stated that while he was pursuing § 87(2)(b) he tripped and fell to the ground. § 87(2)(b) continued running, and PO Rodriguez continued to pursue him. When PO Powell caught up to § 87(2)(b) and PO Rodriguez, they were behind a gated enclosure in front of 546 West 160<sup>th</sup> Street. After PO Rodriguez pulled § 87(2)(b) to the ground, PO Rodriguez entered the enclosed area. PO Rodriguez and § 87(2)(b) were tussling on the ground. § 87(2)(b) was on the ground, with his stomach on the ground. § 87(2)(b) tucked his arms under his stomach. PO Powell tried to pull § 87(2)(b)'s arms behind his back. PO Powell got on top of § 87(2)(b)'s back and verbally instructed § 87(2)(b) to give him his arms. PO Powell did not recall how long he put his body weight on § 87(2)(b)'s back. PO Powell shifted, so that one knee was on § 87(2)(b)'s back. PO Powell did not recall where specifically on § 87(2)(b)'s back he put his knee. PO Powell was eventually able to pull § 87(2)(b)'s arms out from under him. PO Powell did not recall how long it took to extricate § 87(2)(b)'s arms. PO Powell did not recall if he was the officer to handcuff § 87(2)(b). § 87(2)(b) said that he could not breathe, so PO Powell moved § 87(2)(b) from his stomach on to his side, and then moved him into an upright seated position.

The TRI prepared by PO Powell **(06 Board Review)** indicates that PO Powell used physical force against § 87(2)(b) and the force was classified as a forcible take down. The TRI also indicates that the force was used to overcome the force used against PO Powell by § 87(2)(b) which was classified as wrestling and grappling. The TRI shows that force was used against § 87(2)(b) for defense of self and other police officers, because § 87(2)(b) was fleeing, and to overcome the resistance or aggression displayed by § 87(2)(b).

Sgt. Balzotti **(07 Board Review)** stated that he arrived after § 87(2)(b) was in handcuffs, and did not see any officer place their knee against § 87(2)(b)'s back. Sgt. Balzotti did not hear § 87(2)(b) complain that he could not breathe.

A photograph of § 87(2)(b) contained in Sgt. Balzotti's ISAR shows a laceration above § 87(2)(b)'s left eye **(20 Board Review)**.

PO Ferrer **(08 Board Review)** stated that PO Rodriguez and PO Powell placed their arms on § 87(2)(b)'s back to try to keep him from moving on the ground. PO Ferrer did not see any officer place their knee on § 87(2)(b)'s back. PO Ferrer left 546 West 160<sup>th</sup> Street to look for the female § 87(2)(b) had been observed assaulting before § 87(2)(b) was apprehended.

PO Rodriguez **(05 Board Review)** did not see any officer place their knee against § 87(2)(b)'s back, and stated that he did not place his knee against § 87(2)(b) while handcuffing him.

PO Powell acknowledged using physical force against § 87(2)(b) by laying his body weight against § 87(2)(b)'s back, and placing his knee into § 87(2)(b)'s back. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) (**03 Board Review**) stated that she observed an officer make a downward motion with his right fist towards § 87(2)(b) a motion which § 87(2)(b) perceived to be a punch. § 87(2)(b) was either on the ground or if he was on the way to the ground when he was punched. § 87(2)(b) described this officer as white or Latino, skinny, wearing a black or dark sweatshirt, and jeans, and stated that this officer was one of the two initial officers who had chased § 87(2)(b) to 546 West 160<sup>th</sup> Street.

§ 87(2)(b) (**04 Board Review**) did not describe seeing any officer punch § 87(2)(b)

PO Rodriguez (**05 Board Review**) and PO Ferrer (**08 Board Review**), the first two officers to enter the gated area with § 87(2)(b) stated that they did not punch § 87(2)(b) and did not see any other officer do so. Sgt. Balzotti (**07 Board Review**) and PO Powell (**06 Board Review**) also stated that they did not punch § 87(2)(b) and did not see any other officer do so.

As described above, the cell phone video (**02 Board Review**) provided by § 87(2)(b) captures § 87(2)(b) saying, "He hit me." The video shows that Sgt. Balzotti and PO Powell are the officers in § 87(2)(b) immediate vicinity when § 87(2)(b) makes that statement. It is not clear who § 87(2)(b) is referring to, or at what point during the interaction he is alleging to have been hit.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been party (**19 Board Review**).
- PO Rodriguez has been a member of service for twelve years, and has six previous allegations and no substantiations. PO Rodriguez has three previous physical force allegations.
- PO Powell has been a member of service for seven years, and has thirty five previous allegations. In CCRB case 201509083, four allegations were substantiated against PO Powell: Abuse of Authority (stop), Abuse of Authority (refusal to provide name and shield number), Abuse of Authority (frisk), and Abuse of Authority (search). The CCRB

recommended Command Discipline A, and PO Powell received Command Discipline A. PO Powell has five previous physical force allegations.

**Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation.
  - According to the Office of Court Administration (OCA), § 87(2)(b) has no history of criminal convictions in New York City (**11 Board Review**).
  - According to the Office of Court Administration (OCA), § 87(2)(b) has no history of criminal convictions in New York City (**18 Board Review**).
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Squad No.: 3

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date